

A.G. Contract No.: KR05-0457TRN
ECS File No.: JPA 05-022
Project No.: S-B79-A-500
Section: SR 79B
Project: Butte Avenue - Main Street
TRACS No.: H6766 01C
Budget Source Item No.: 73306
District Minor

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF FLORENCE

THIS AGREEMENT is entered into this date July 7, 2005, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF FLORENCE, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

3. The parties hereto agree to and acknowledge the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; b) The parties shall perform their responsibilities consistent with this Agreement; and c) Any change or modification to the Project will only occur with the mutual written consent of the parties.

4. The purpose of this Agreement is to transfer a one-time lump sum amount of \$30,000.00 to the Town, for drainage improvements located on State Route 79B at the intersection of Butte Avenue and Main Street, hereinafter referred to as the "Project".

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27603
Filed with the Secretary of State
Date Filed: 7/7/05
Janice K. Brewer
Secretary of State
By: Marie Pessierello

II. SCOPE OF WORK

1. The State shall:

a. Upon execution of this Agreement and receipt and approval of an invoice (Attached) from the Town, remit to the Town a one-time lump sum amount of \$30,000.00 for cost associated with the drainage improvements.

b. Grant the Town an "Encroachment Permit", through the Tucson District Maintenance Office, as shown on Exhibit "A", attached hereto and made apart hereof, for work inside the State's right-of-way to permit the Town to perform all improvements to the drainage system.

2. The Town shall:

a. Upon execution of this Agreement, invoice the State, using the JPA Master Pay Report From (Attached) for the one-time lump amount of \$30,000.00 for the cost associated with the drainage improvements.

b. Obtain the necessary "Encroachment Permit", as shown on Exhibit A, through the Tucson District Maintenance Office, for all improvements to the drainage system.

III. MISCELLANEOUS PROVISIONS

1. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorneys' fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

2. This Agreement shall become effective upon filing with the Secretary of State.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

4. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
(602) 712-7525

Town of Florence
Attn: Public Works
775 North Main Street
Florence, AZ 85232
(520) 868-7500


10. In accordance with Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TOWN OF FLORENCE

STATE OF ARIZONA

Department of Transportation

By 
TOM RANKIN
Mayor

By 
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations

ATTEST:

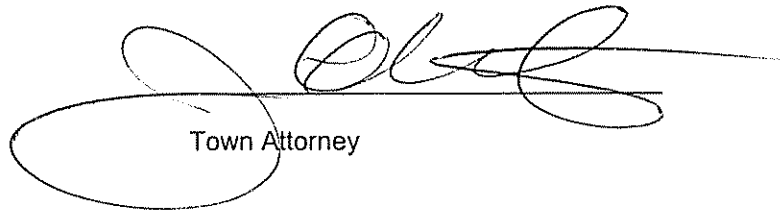
By 
LISA GARCIA
Clerk

JPA 05-022

APPROVAL OF THE TOWN OF FLORENCE

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF FLORENCE, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 14 day of June, 2005.


Town Attorney

**Exert from the Minutes of the June 6, 2005 Florence Town Council Meeting.
Unapproved Draft.**

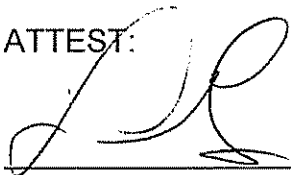
8. NEW BUSINESS

d. Discussion/Approval/Disapproval of authorizing the Town Manager to enter into an Intergovernmental Agreement with the State of Arizona, Department of Transportation for Drainage Improvements on Butte Avenue and Main Street.

Himanshu Patel, Town Manager, stated the intergovernmental Agreement is needed for the Town to be reimbursed for the improvements on Butte Avenue and Main Street.

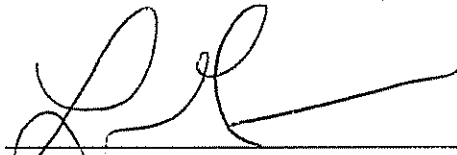
On motion of Vice-Mayor Smith, seconded by Councilmember Sanders and carried to authorize the Town Manager to enter into an intergovernmental Agreement with the State of Arizona Department of Transportation for drainage improvements on Butte Avenue and Main Street.

ATTEST:



Lisa Garcia, Town Clerk

I certify that the following is a true and correct copy of the minutes of the Florence Town Council Meeting held June 6, 2005 and that the meeting was duly called to order and that a quorum was present.



Lisa Garcia, Town Clerk



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE:
602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0457TRN (**JPA 05-022**), an Agreement between public agencies, i.e., *The State of Arizona* and *The Town of Florence*, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: June 29, 2005

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis", is written over a horizontal line.

Susan E. Davis
Assistant Attorney General
Transportation Section

SED:mjf
Attachment
911969